

1 UNITED STATES COURT OF APPEALS
2 FOR THE SECOND CIRCUIT
3

4 SUMMARY ORDER
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6 THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL
7 REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS
8 OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS
9 OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A
10 RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL
11 OR RES JUDICATA.
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13 At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the
14 Thurgood Marshall United States Courthouse, at Foley Square, in the City of New York, on the
15 9th day of August, two thousand and five.
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17 PRESENT:

18 HON. GUIDO CALABRESI,
19 HON. REENA RAGGI,
20 *Circuit Judges,*
21 HON. DENISE COTE*
22 *District Judge.*
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29 JAMES KVEDAR,
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31 *Plaintiff-Appellee,*
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33 v.

No. 04-6334-cv

34
35 FRANK GRIFFIN,
36

37 *Defendant-Appellant.*
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* The Honorable Denise Cote, United States District Judge for the Southern District of New York, sitting by designation.

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2 For Plaintiff-Appellee:

JOHN R. WILLIAMS, New Haven,
Conn.

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5 For Defendant-Appellant:

GREGORY T. D'AURIA, Associate
Attorney General, (Jane R.
Rosenberg, Assistant Attorney
General, *on the brief*), for Richard
Blumenthal, Connecticut Attorney
General, Hartford, Conn.

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12 Appeal from a final decision of the United States District Court for the District of
13 Connecticut (Joan G. Margolis, *M.J.*).

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17 **UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND**
18 **DECREED** that the judgment of the District Court is **REVERSED**.

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21 Defendant-Appellant Frank Griffin ("Griffin"), Commanding Officer of the Bureau of
22 Criminal Investigations in the Connecticut State Police ("CSP"), appeals from the district court's
23 denial of his motion for summary judgment on a claim for damages under 42 U.S.C. § 1983
24 brought by James Kvedar ("Kvedar"), a Trooper in the CSP. Kvedar alleges that Griffin
25 violated his equal protection rights under the Fourteenth Amendment by disciplining Kvedar for
26 Kvedar's handling of an incident at the Foxwoods Casino but not disciplining other officers who
27 handled similar incidents in a similar manner. Griffin moved for summary judgment, on the
28 grounds (1) that Kvedar failed to state a claim, and (2) that Griffin was entitled to qualified
29 immunity.

30 Because immunity is an entitlement not to stand trial, and thus is effectively lost if a case
31 is allowed to proceed, the denial of qualified immunity is appealable, but only to the extent that

1 the denial turns on a question of law. *Mitchell v. Forsyth*, 472 U.S. 511, 530 (1985); *Cowan v.*
2 *Breen*, 352 F.3d 756, 760-61 (2d Cir. 2003).

3 We assume the parties’ familiarity with the facts, the procedural history, and the issues on
4 appeal.

5 To state a valid equal protection “class of one” claim, a plaintiff must allege (1) that he or
6 she has been intentionally treated differently from others similarly situated, and (2) that there is
7 no rational basis for the difference in treatment. *Vill. of Willowbrook v. Olech*, 528 U.S. 562, 564
8 (2000); *DeMuria v. Hawkes*, 328 F.3d 704, 706 (2d Cir. 2003). After the district court denied
9 Griffin’s summary judgment motion, this Circuit clarified the standard for the “similarly
10 situated” prong of equal protection “class of one” analysis. *Neilson v. D’Angelis*, 409 F.3d 100,
11 105 (2d Cir. 2005). Under *Neilson*, it is clear that, as a matter of law, Kvedar’s situation was
12 insufficiently similar to his comparators’ to support an equal protection “class of one” claim.

13 The judgment of the district court is, therefore, REVERSED, and the district court is
14 instructed to grant summary judgment to Griffin.

15
16 For the Court,

17 ROSEANN B. MACKECHNIE,

18 Clerk of Court

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20 by: _____
21 Oliva M. George, Deputy Clerk